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it is a sale by the acre, and not a sale in gross, and this presumption can only be overcome by clear and cogent proof.

[Ed. Note.—For other cases, see *Vendor and Purchaser*, Cent. Dig. § 132; Dec. Dig. § 80.\*]

**2. Vendor and Purchaser (§ 34\*)—Action for Deficiency.**—In response to a letter from plaintiff asking defendant if she would sell certain land and, if so, to state the price and the number of acres in the tract, defendant replied that it was said to contain 75 acres, and thereafter gave plaintiff an option for a given price, stating that the land was said to contain 75 acres. After conveyance the tract was found to contain only about 53 acres. Held, in an action for the deficiency, that defendant's statement, while not amounting to a positive affirmation as to quantity, was a representation of quantity on which plaintiff had a right to rely.

[Ed. Note.—For other cases, see *Vendor and Purchaser*, Cent. Dig. § 39; Dec. Dig. § 34.\*]

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STANDARD PEANUT CO. *v.* WILSON.

Jan. 14, 1909.

[63 S. E. 430.]

**1. Appeal and Error (§ 511\*)—Record—Proceedings in Record—Bill of Exceptions—Signing.**—Va. Code 1904, § 3385, which provided that a bill of exceptions might be tendered to the judge and signed by him either during the term at which the opinion excepted to was announced, or within 30 days thereafter, or at such time as the parties by consent entered of record might agree upon, and a bill so tendered should be part of the record, was mandatory, and, unless the record affirmatively shows that bills of exceptions in cases in which judgments were rendered while the section was in force were signed in accordance therewith, they do not constitute part of the record, and hence where bills of exceptions bear no date, and the record is silent as to which, if any, of the statutory requirements were complied with, and it does not appear whether they ever became part of the record, they cannot be considered.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 2319-2321; Dec. Dig. § 511.\*]

**2. Appeal and Error (§ 536\*)—Record—Incorporating Matter in Record—Power of Clerk.**—The clerk of court has no authority to make bills of exceptions a part of the record, and the mere copying by him of unauthorized bills of exceptions with the record would not make them a part thereof.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. § 2402; Dec. Dig. § 536.\*]

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\*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.